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February 17, 2014

VIA ECF

Honorable Ann Marie Donio, U.S.M.J.
U.S. District Court, District of N.J.
Mitchell H. Cohen U.S. Courthouse, #2010
1 John F. Gerry Plaza
Fourth & Cooper Streets
Camden, New Jersey 08101

Re: Reuben Durst, Trustee, Steven Durst, individually and as Trustee
v. Matthew Durst, individually and as Trustee, Halloran & Sage, LLP,
Robinson & Cole, LLP and Kelly Galica-Peck
Civil Action No. 1:12-cv-05255 (JBS) (AMD)
Return Date: March 3, 2014
MDMC File No. T0222-1070

Dear Judge Donio:

This firm represents defendant Halloran & Sage, LLP ("H&S") in this case. We have reviewed the latest motion for leave to file a second amended complaint filed by plaintiffs and conferred with counsel for co-defendants Robinson & Cole, LLP ("R&C") and Kelly Galica-Peck, Esq. ("Peck"). On behalf of H&S, R&C and Peck, please accept this limited opposition to plaintiffs' motion. Since our objection to plaintiffs' motion is strictly procedural, we do not believe that a formal brief is required. See L.Civ.R. 7.1(d)(4).

Plaintiffs' first motion for leave to amend their complaint for legal malpractice against John A. Yacovelle, Esq., was the subject of extensive oral argument before the Court on June 18, 2013. Following that argument, the Court entered an Order dismissing plaintiffs' motion without prejudice and allowing them to file a renewed motion as to Mr. Yacovelle only. (D.E. 58, at 2.) Plaintiffs did not advise the Court that they wished to amend the complaint as to any of the other defendants in the case, nor did the Court's Order allow them to do so. Plaintiffs' second motion to amend as to Yacovelle was also denied.

Although plaintiffs have neither sought nor been granted leave to amend their claims against H&S, R&C and Peck, the latest, proposed second amended complaint expands the allegations against Ms. Peck and, by extension, her prior and current law firms. Specifically, paragraphs 79 and 80 of the proposed second amended complaint state as follows:

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79. Yacovelle and Peck knew of Matthew Durst's wrongful distributions of Trust funds and did not advise against them.
80. Yacovelle and Peck profited from Matthew Durst's wrongful distributions.

[D.E. 73-2, Ex. M, at 11.]

Plaintiffs had not previously alleged that Mr. Yacovelle and Ms. Peck somehow knew of Matthew Durst's alleged wrongful distributions and/or that they profited from his purported actions. There has been no discovery taken that would support those allegations. Plaintiffs were granted leave to file a new motion fleshing out their purported cause of action against Mr. Yacovelle. They did not ask the Court and the Court did not permit them to expand their claims against Ms. Peck. This is nothing more than a thinly veiled attempt to broaden the scope of plaintiffs' allegations against Ms. Peck and her firms without obtaining the proper leave to do so.

On a related note, Count II of the proposed second amended complaint addresses the legal malpractice claims against Peck, H&S and R&C. However, paragraph 105 of the proposed pleading is directed at Mr. Yacovelle and alleges that "the Trust has been divested of over \$3 million of Trust assets." [Id. at ¶105.] Assuming plaintiffs meant to direct that allegation to the legal malpractice defendants, that paragraph should also be stricken from the proposed pleading as it was not contained in any prior pleading filed by plaintiffs and is simply another attempt to expand the claims against Ms. Peck and her firms.

For all of these reasons, we respectfully request that the Court deny plaintiffs' motion to the extent it seeks to expand the allegations against Peck, H&S and R&C in paragraphs 79, 80 and 105 of the proposed second amended complaint or any other portion of their pleading. We have enclosed a proposed form of Order for the Court's convenience.

Thank you for your attention to this matter.

Respectfully submitted,

McELROY, DEUTSCH, MULVANEY & CARPENTER, LLP

s/ William O'Connor, Jr.
William F. O'Connor, Jr.

Encl.

cc: All Counsel of Record (Via ECF)(w/encl.)

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

REUBEN DURST, Trustee, STEVEN
DURST, Individually and as Trustee,

Plaintiffs,

vs.

MATTHEW DURST, Individually and as
Trustee, HALLORAN & SAGE, LLP,
ROBINSON & COLE, LLP, and KELLEY
GALICA-PECK,

Defendants.

Civil Action No. 1:12-cv-05255 (JBS) (AMD)

ORDER

This matter having come before the Court on plaintiffs' motion for leave to file a second amended complaint; and defendants Halloran & Sage, LLP, Robinson & Cole, LLP, and Kelley Galica-Peck, Esq., having submitted limited opposition to plaintiffs' motion; and the Court having considered the submissions of the parties; and for good cause shown;

IT IS on this _____ day of March, 2014,

ORDERED that paragraphs 79, 80 and 105 of plaintiffs' proposed second amended complaint be and hereby are stricken; and it is further

ORDERED that a copy of this Order be served on all counsel of record within seven (7) days.

HON. ANN MARIE DONIO, U.S.M.J.